

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

B.F. HICKS, GARY BOREN, and KATHY
BOREN,

Plaintiffs,

v.

SCOTT ANDREWS, *ET AL.*,

Defendants.

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CIVIL ACTION NO. 5:23-CV-81-RWS-JBB

ORDER

Before the Court is the Magistrate Judge’s Report and Recommendation regarding Defendants’ Motion to Dismiss for Failure to State a Claim (Docket No. 14). Docket No. 34. Plaintiffs filed the above-captioned action against Defendant Scott Andrews and various entity Defendants¹ for intentional nuisance, negligent nuisance, strict-liability nuisance, anticipatory nuisance, and violation of the Texas Water Code in the 62nd Judicial District Court of Franklin County, Texas. Docket No. 1. Defendants removed the case on the basis of diversity jurisdiction, and it was referred to United States Magistrate Judge Boone Baxter pursuant to 28 U.S.C. § 636(b)(1). Docket No. 1.

¹ The entity Defendants include Stockyard Solar Project, LLC, Saddle House Solar Project, LLC (“Saddle House”), and Enel Energy North America Texas, LLC, Enel Green Power Azure Blue Jay Solar Holdings, LLC, Enel Green Power Estonian Solar Project, LLC, Enel Green Power Lily Solar Holdings, LLC, Enel Green Power N.A. Development, LLC, Enel Green Power North America, Inc., Enel Green Power Roadrunner Solar Project I, LLC, Enel Green Power Roadrunner Solar Project II, LLC, and Enel Green Power Roseland Solar, LLC (collectively, the “Enel Defendants”). *See* Docket No. 1.

The Enel Defendants filed this motion to dismiss for failure to state a claim (Docket No. 14).² The Magistrate Judge recommended that Plaintiffs' nuisance and Texas Water Code claims be dismissed without prejudice to refiling. Docket No. 34. Specifically, the Magistrate Judge found that, as pleaded, Plaintiffs failed to state a plausible claim for injunctive relief to prevent a threatened injury. *Id.* The Magistrate Judge recommended that amendment would not be futile, and that Plaintiffs should be given an opportunity after removal from state court to amend their complaint to plausibly state their claims. *Id.*

Because no objections have been received, Defendants are barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). Accordingly, it is

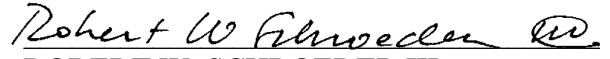
ORDERED that the Report of the Magistrate Judge (Docket No. 34) is **ADOPTED** as the opinion of the District Court. It is further

² In addition, Plaintiffs filed a motion to remand the case back to state court (Docket No. 12) and a motion to amend (Docket No. 13). Defendant Andrews also filed a motion to dismiss for improper joinder (Docket No. 21). These motions will be addressed in a separate order.

ORDERED that the Enel Defendants' Motion to Dismiss for Failure to State a Claim (Docket No. 14) is **DENIED WITHOUT PREJUDICE TO REFILING**. It is further

ORDERED that that Plaintiffs shall file, within twenty (20) days from the date of entry of this Order, a second amended complaint with sufficient allegations to state plausible Texas Water Code and/or nuisance claim(s) to satisfy Federal Rule of Civil Procedure 12(b)(6). If Plaintiffs fail to file an amended complaint, the case will be dismissed with prejudice.

So ORDERED and SIGNED this 20th day of March, 2024.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE